IN THE HIGH COURT OF BOMBAY AT GOA

MISC. CIVIL APPLICATION NO. 551/2006

Smt. Laxmi Jairam Dhond. ..... Applicant.

V/s.

1. Stm. Sushila D. Amonkar and others. ..... Respondents.

Mrs. A. A. Agni, Advocate for the applicant.

Mr. S. D. Lotlikar, Senior Advocate with Ms. S. Rao, Advocate for the respondents.

CORAM : P.V. KAKADE, J.

DATE : 22ND AUGUST, 2006.

ORAL ORDER :

This is an application for condonation of delay of 97 days in filing the appeal against the order passed by the lower Court in respect of the proposed auction sale in the court proceeding.

2. Heard learned Counsel for both the parties. Advocate for the respondents appears and files affidavit-in-reply.

It is submitted on behalf of the applicant that she is a senior citizen and she has been keeping indifferent health for the last one year

and the matter was being handled by her son in law in the Inventory Proceedings No.20/99/A. The objections were filed by the applicant and after filing the rejoinder on 13.10.2004, the applicant had been informed that the matter has been pending for argument. The impugned order was passed on 14.2.2006, however, the applicant did not know about the passing of the order in the said inventory proceeding and came to know about the order having been passed by the trial Court only on 16.08.2006 through her son-in-law who informed her that the Advocate for the applicant appearing in the Inventory Proceeding happened to meet him and informed that the auction in respect of the items in the list of assets, as also other items at serial nos. 1 to 4 was fixed on 23.08.06. Hence, the present application is filed for condonation of delay on the ground that the applicant did not receive any letter from the Advocate and this was communicated by her son-in-law and that she came to know about the order passed on 14.2.06 for the first time on 16.08.06.

The application has been objected to strongly on behalf of the respondents on various grounds, stating that the statement regarding indifferent health of the applicant is not correct. Moreover, it is brought to the notice of the Court that it was not the case that the auction was fixed for the first time on 23.8.06, but there were several dates in

between after the order dated 14.2.06 came to be passed. However, no auction was held due to one reason or the other and the auction is now proposed to be held on 23.08.06. In other words, the respondents submitted that the application of the applicant is not bonafide and, therefore, deserves to be dismissed.

3. I have heard both the parties and perused the record. I am given to understand that the auction of four items is proposed to be held on 23.08.06 and the applicant has no objection for holding auction of three items and the objection which is sought to be raised is in respect of one item that is the shop premises on the ground that the applicant has one half share therein. The learned Advocate for the applicant sought to put reliance on the ruling of the Apex Court in the case of **N. Balakrishnan vs. M. Krishnamurthy.,** 1998 AIR SCW 3139 wherein it was observed by the Apex Court that the delay caused due to failure on the part of Advocate to inform the appellant as well as failure to take action, could not be the ground to deny opportunity to the applicant to seek condonation of delay. It was further observed that the proper way for the Court would be to compensate the opposite party adequately in such cases. The learned Counsel for the respondent submitted that the son-in-law of the applicant used to look after the proceeding and there

is no whisper from him as to what actually happened in this regard. The Advocate for the applicant proposes that she was ready to file affidavit of the son-in-law, who was looking after the proceeding, though the fact is not admitted by the applicant. At any rate, I am of the considered view that the delay of 97 days should not be fatal to the cause of the applicant. It is needless to mention that it is always desirable that the lis between the parties should be adjudicated effectively after giving opportunity to both the sides to put up their respective cases. Law in this regard is quite clear. Also there does not appear to be any malafides present in the application made by the applicant and, in view of this aspect, I am inclined to grant the application of the applicant.

4. Hence the application is allowed and the delay of 97 days is, hereby, condoned. With this direction, the application stands disposed of with no order as to costs.

P.V. KAKADE, J.

ssm.